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No. 737. *June Term, 1877.*

Court of Common Pleas,

No. 2,

The Library Company of Philadelphia

vs.

William J. Donohugh, Collector, &c.

PAPER BOOK OF DEFENDANT.

LOUIS E. PFEIFFER,
J. HOWARD GENDELL,
CHARLES H. T. COLLIS,
For Defendant.

In the Court of Common Pleas, No. 2, of Philadelphia.

IN EQUITY.

Of June Term 1877. *No.* 737.

THE LIBRARY COMPANY OF PHILADELPHIA

vs.

WILLIAM J. DONOHUGH, Collector, &c.

PAPER BOOK OF DEFENDANT.

The bill is filed for the purpose of ascertaining in an easy and expeditious manner whether the real estate of the complainant is subject to taxation. Understanding that a very important question respecting the future of the library company may depend upon the result, we do not feel disposed to press strongly the obvious objection to the forum in which the decision is asked for; and as the proposed action to which we have referred is to be permanent, and depends not so much on the comparatively trifling amount of one year's taxes, as on the question of liability for the future, we presume that a decision is desired on the main question, and the temporary effect of the supposed action of the Board of Revision is a matter of minor importance. This accounts for the fact that after citing the acts relating to the Board of Revision this subject is dismissed by the plaintiff without argument. After a few words on this point we will consider,

1st. Whether the plaintiff is within Art. 9, § 1 of the constitution.

2d. Whether the plaintiff is not within the proviso to the act of May 14th 1874, excepting from the exemption allowed by that act all property from which any income or revenue is derived.

We submit that the acts printed on pages 24–26 of complainant's brief show that the duties of the Board of Revision are confined to mere valuations and have no relation whatever to questions of liability to, or exemptions from, taxation.

The original act (act of 1865) gives the Board "the power to revise and equalize the assessments *by raising or lowering the valuation*, * * * *to make valuations* where they have been omitted," &c. The right to "hear all the appeals and applications of the taxpayers," clearly relates to the powers already given, and this is made still more apparent by the next clause, in which the City Commissioners are deprived of their "power to correct or revise the taxes," and are required to lay before the Board of Revision "the request of the taxpayers *to have their taxes reduced*," and this again is followed by a clause forbidding the Board to "lower the aggregate *valuation* of the county."

The act of 1867, § 2, gives the Board the powers of the County Commissioners in relation to the assessors and the assessment and collection of taxes, "*and the correction of all valuation* and return therefor." § 3 gives them "power to *revise and equalize* the assessments."

It will thus be seen that the duties of the Board accord fully with their name, and are confined generally to the "revision" of the work of the assessors to whom it will not be pretended that the duty of passing upon so delicate a question as that involved in this case is imposed. The only peg upon which an argument for the complainant can be hung, is the use of the word "assessments," but the context sufficiently shows that this is used in the sense of valuations. The jurisdiction of the courts of deciding all controversies according to the ordinary forms of law, can-

not be taken away without clear and express words; it cannot be done by a loose and uncertain influence, especially where the result would be to vest it in a body of laymen whose sessions are private, who proceed without notice and whose decisions cannot be revised by the Supreme Court.

Passing the effect of the alleged adjudication, we inquire, *Is the Plaintiff's property exempt?*

The owners of nearly $60,000,000 of property in this city claim exemption from taxation. At the tax rate of 1877, allowing nothing on the one hand for deductions for prompt payment, or on the other hand for penalties for delay, this sum should produce $1,350,000 of taxes. It is therefore manifestly of the highest importance that the Courts should adhere to the rule laid down in Academy of Fine Arts *vs.* Philadelphia County, 10 Harris, 496, that statutes which give exemption from a general burden should receive a strict construction, and that "no interests falling within the general description of taxable property can claim exemption from bearing their just proportion of the public charges, unless the exemption be so clearly expressed in the statute as to admit of no other construction. It is never to be presumed that the Legislature intend to lay unequal burdens upon the people; and their enactments are not to be construed so as to produce that result, unless the intent is so plainly expressed as to render it unavoidable."

The first clause of Article 9 of the Constitution standing alone, sweeps away all exemptions; Londonderry *v.* Berger, 7 Leg. Gaz. 231. The rest of the clause is enabling, and we do not understand that it is claimed that the Legislature may extend the exemptions beyond the classes there enumerated. Unless, therefore, the plaintiff's property falls within that provision, it is needless to inquire whether it is included in the Act of 1874. There are four classes which may be exempted—public property, and three classes of charities, viz:

1. Actual places of religious worship.

2. Certain places of burial.

3. "Institutions of purely public charity."

The words "purely public" must have some meaning. We cannot entirely reject them as surplusage, and hold that the Legislature may exempt any charitable institution whatever. It is an established canon of construction that some meaning must be attributed to every word to which a reasonable construction can be given. The plaintiff would have us reject not only the adjective qualifying the word "charity," and the adverb intensifying the adjective, but also two whole classes of cases which his own brief (page 22) shows to be charities, and which are therefore included in the last class. This absurdity ought not to be attributed to the Constitutional Convention, for the purpose of producing a result which, as we have seen, should not be reached "unless the intent is so plainly expressed as to render it unavoidable."

The true distinction is suggested by the authorities cited on page 6 of plaintiff's brief. That is a charity whose benefits are extended to the public—if confined to the members it is not a charity. So, also, that charity is "purely public" in which the benefits are *equally* extended to everybody, but if members, stockholders or subscribers enjoy benefits not extended to others, it is *to that extent* not public, and, therefore, taken as a whole, not purely public. This explains the threefold classification:

1. Churches, &c., some of which, although charities, extend greater privileges and advantages to their own members, pew-holders, communicants or contributors than to the people at large. Therefore, as it was thought proper to exempt them from taxation, they were separately specified.

2. Cemeteries, &c., which are principally for the advantage, although not for the "profit" of lot-holders, and are therefore separately named.

3. Other charities must be purely public.

The Philadelphia Library is partially for the advantage of the public at large. It may, even among the stockholders, add to and cheapen the facilities for literary culture. It may, therefore, be a charity; but as the stockholders, members and subscribers have facilities and advantages not enjoyed by the public at large, it is, *quoad hoc*, for private advantage and profit, and its charity is not *purely* public. Not being among the classes specially named, it is not exempt.

To this effect is Carne *v.* Long, 2 De Gex, Fisher & Jones, 75, cited by plaintiff, pp. 13–14, note. "A library established for the pupose of purchasing and preserving books for the use of the subscribers," was held not to be charity at all. The plaintiff in this case is a corporation whose members are stockholders. The par value of the stock is $40. Each share is subject to the payment of an annual tax of $8. It is a close corporation; the stock cannot be transferred without the consent of the Board of Directors elected by the stockholders. To these stockholders a very important use of the library—the privilege of taking books for use without the building—is principally confined. Carne *v.* Long decides that as to them the institution is not a charity, "but a mere association for the mutual benefit of the contributors." Is it rendered any more a charity by the fact that it sells for a money consideration the right to take away a single book? Is it not rather thereby converted into a commercial body? What distinction is there, except in degree, between the sale of the use of a book for a week, security being given for its return, and the absolute sale of the book? If there is none, is a bookstore a chari-

table institution? Is such an "association for mutual benefit" changed into a "*purely public*" institution by the fact that a subordinate use is charitable?

The distinction which we draw likewise accords with the popular use of the words. The plaintiff, citing Miller *v.* Porter, 3 P. F. Sm. 292, inform us that a gift to found a school is a charitable gift, and that it is "no matter that it was not to be a free school." (See pp. 8–9.) Nevertheless the words "public schools" are used to distinguish free schools from "pay schools." This is precisely our point.

In The School District of Upper Darby *v.* The Rector, &c., of St. Stephen's Church, Legal Int., Aug. 17, 1877 (34 Leg. Int. 291), the Common Pleas of Delaware County directly sustained our views, holding that unless the charity is purely public the institution is not exempt, and that "If its general benefits are subject to private preferences or conditions by which the general public will probably be excluded, it is not a *purely* public charity, and therefore not within the protection of the act."

So too Academy of Fine Arts *v.* Philadelphia County, 10 Harris, 496, already cited, is ruled upon an analogous ground. The act of 1838 exempted *inter alia* all incorporated academies. The Academy of Fine Arts is unquestionably a charity. Cresson's Appeal, 6 Casey, 437 cited by plaintiff, page 7. Nevertheless it was held not to be exempt, although pupils were taught *gratis*, because it was for the special benefit of students of art only, and not of all students in general.

We apprehend that the complainant has not sufficiently regarded the distinction between a charitable *gift* and a charitable *institution*, the recipient of the gift. Very nearly all the cases cited by the plaintiff relate to the validity or invalidity of a gift or legacy. Such questions are very different from the questions of the status of the legatee. This distinction, it is believed, will re-

lieve us from the discussion of all the cases cited by the plaintiff with three exceptions.

Philadelphia *v.* American Philosophical Society, 6 Wright, 9, was *not* decided simply on the ground, that the society is a charity. By reference to pages 19, 20, it will be seen that the exemption was allowed, because "the eventual legal title to the society lot is the Commonwealth." "It is clear then, that the society could not charge this lot by any recognisance, mortgage, judgment, debt, obligation or responsibility, nor could they create any lien upon it; because it could not be sold by any form of execution, and this being the case, no taxes could be a lien upon it, and no form of proceeding to recover the same could create a lien upon this lot, because it could not be sold under any such judgment." Therefore, *scire facias* on a tax claim could not be sustained.

Nor is The City of Philadelphia *v.* The Trustees of the University, 8 Wright, 360, any more nearly in point. The Act of 1837 exempted universities from taxation, and it was held that the medical department was an integral part of the university, and therefore exempt. The public or charitable nature of the institution was not considered.

Gerke *v.* Purcell, 25 Ohio, St. R., 229, is very imperfectly cited. About the middle of page 20 of the plaintiffs' brief are three asterisks. Each of these asterisks represents a page in the original, and the words "this branch of the subject" which follow them relate to a different "branch" altogether from that which precedes them. In the intervening pages, the court decided, that the words "public school houses," refer exclusively to "such as *belong to* the public, such as are designated for the schools established and conducted under the authority of the public." It is with regard to *these*—to institutions which are public, because *belonging* to the public, that it is immaterial whether compensation be charged. (See page 242). The case differs substantially from ours

in that there was no class of privileged stockholders or contributors, but "the schools are open for the admission of children of parents of all denominations, and the instruction afforded by them is *substantially gratuitous*, no compensation being exacted * * * * . Small contributions of twenty-five or fifty cents per month are expected from parents who are able to contribute; but the aggregate amount of these contributions is small. The schools are *substantially supported* out of the revenues of the church."

This case taken in connection with the facts on which it is based, does not warrant the deductions which the plaintiff seek to draw.

We also call attention to the proviso to the Act of 1874, which has been passed in silence by the plaintiff. Property "from which any income or revenue is derived shall be subject to taxation." This does not refer to rent alone. A book store kept by the owner of the fee is certainly within its meaning. The building in question is used to hire out books to those who will pay for them. It thus produces "an income or revenue," and is therefore subject to taxation. The use to which the revenue is put is not material. See Cincinati College *vs.* The State, 19 Ohio R. 110; St. Mary's College *vs.* Crowe, Treasurer, &c., 10 Kansas R. 442.

On the whole case, the least that can be said in our favor, is that the intention to exempt is not "so clearly expressed as to admit of no other construction * * * . So plainly expressed as to render it unavoidable." The injunction should therefore be refused.

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For Defendant.